

— to order the Republic of Austria pay the costs.

Pleas in law and main arguments

The period for transposition of the directive expired on 1 May 2008.

⁽¹⁾ OJ 2006 L 102, p. 15.

Reference for a preliminary ruling from the High Court of Justice (England and Wales), Chancery Division, made on 29 March 2010 — British Sugar plc v Rural Payments Agency, an Executive Agency of the Department for Environment, Food and Rural Affairs

(Case C-147/10)

(2010/C 148/29)

Language of the case: English

Referring court

High Court of Justice (England and Wales), Chancery Division

Parties to the main proceedings

Applicant: British Sugar plc

Defendant: Rural Payments Agency, an Executive Agency of the Department for Environment, Food and Rural Affairs

Questions referred

1. Is Commission Regulation (EC) No 1193/2009 ⁽¹⁾ invalid, having regard to the judgments of the Court of Justice in Joined Cases C-5/06 and C-23/06 to C-36/06 *Zuckerfabrik Jülich AG v Hauptzollamt Aachen* [2008] ECR I-3231 and joined cases C-175/07 to C-184/07 *SAFBA* [2008] ECR I-184*?
2. Is Commission Regulation (EC) No 1193/2009 otherwise invalid, having regard to the legal basis on which it has been adopted, namely Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽²⁾?

3. In calculating the compensation payable in respect of overpayments of sugar production levies in the marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006, is the applicable currency exchange rate and date of conversion a matter to be determined by European Union law? If so, is Article 6 of Commission Regulation (EC) No 1193/2009 to be interpreted as requiring compensation to be paid by reference to the currency exchange rates that applied at the time the overpaid levy was originally calculated? If so, is Article 6 of Commission Regulation (EC) No 1193/2009 valid?

4. In relation to interest:

- (i) Does EU law preclude a person in the position of the Claimant from recovering interest on sums overpaid as a result of an invalid Commission regulation from the national authority competent to collect production levies in circumstances where the national authority competent to collect production levies is precluded from recovering interest on the corresponding sums repayable to it from the Commission?
- (ii) If the answer to (i) above is yes, does the EU legislation concerning own resources (Decision 2000/597/EC, Euratom ⁽³⁾), and its implementing Regulation (EC) No 1150/2000 ⁽⁴⁾), properly construed, preclude a national authority competent to collect production levies from recovering interest on sums repayable to it from the Commission in the circumstances of the present case?
- (iii) If the answer to (i) above is no: does EU law preclude a national court or authority from exercising any discretion it may have to award no interest in such circumstances when making an award to a person in the position of the Claimant?

⁽¹⁾ Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006
OJ L 321, p. 1

⁽²⁾ OJ L 178, p. 1

⁽³⁾ Council Decision of 29 September 2000 on the system of the European Communities' own resources
OJ L 253, p. 42

⁽⁴⁾ Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources
OJ L 130, p. 1